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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.205 OF 2026

Rensar Infra Private Limited ... Applicant

V/s.

Rais Kasam Shaikh & Ors ... Respondents

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Mr. Zaid Ansari, for the Applicant.

Mr. Rohan Sawant a/w Mr. Aagam Mehta, Mr. Pratik K
Shah, for Respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 1, 2026

PRONOUNCED ON : OCTOBER 7, 2026.

JUDGMENT:

1. The present Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996. The Applicant seeks appointment of a Sole Arbitrator to decide the disputes between the Applicant and Respondent Nos. 1 and 2. These disputes have arisen out of the Agreement for Sale dated 31 December 2020 ("the said Contract"). The said Contract was entered into between the Applicant, Respondent No. 3 and Respondent Nos. 1 and 2 in respect of Flat No. 1901. The said Contract was registered with the Sub-Registrar of Assurances, Mumbai City-2, under Serial No. BBE2-5849/2021. The said Contract contains an arbitration clause. Under the said clause, disputes between the parties relating to or

connected with the said Contract are to be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The present Application has been filed for constitution of the arbitral tribunal.

2. The relevant facts of the matter are as follows. On 27 January 2011, a Development Agreement was entered into between the Society, its members and Respondent No. 3. Thereafter, on 18 December 2015, a Joint Development Agreement was entered into between the Society, its members, Respondent No. 3 and the Applicant. On 31 December 2020, Respondent Nos. 1 and 2 entered into the said Contract with the Applicant and Respondent No. 3 in respect of Flat No. 1901. In the year 2021, disputes arose between the parties. As a result, the Society and its members filed Commercial Arbitration Petition No. 10 of 2022 against the Applicant and Respondent No. 3 before this Court under Section 9 of the Arbitration and Conciliation Act, 1996. On 3 January 2022, this Court passed an order directing the Applicant and Respondent No. 3 to hand over fit-out possession of the respective flats allotted to the twelve members of the Society in the building, subject to payment of their outstanding dues. The said order dated 3 January 2022 was challenged by the Applicant and Respondent No. 3 before this Court. The said proceedings were disposed of by a Consent Award dated 27 July 2022.

3. In or about January 2022, the Applicant gave limited access of Flat No. 1901 to Respondent Nos. 1 and 2 for carrying out fit-out works. Thereafter, on 7 October 2022, the additional construction which was contemplated under the amended

sanctioned plans of the building was completed. In the year 2024, Respondent Nos. 1 and 2 filed Complaint No. CC006000000530718 before the Maharashtra Real Estate Regulatory Authority (“MahaRERA”) under Section 18 of the Real Estate (Regulation and Development) Act, 2016. The said complaint was allowed by MahaRERA by its order dated 14 August 2024. Being aggrieved by the said order, the Applicant filed Review Application No. CC006000000530718/APPL/RV/1 under Regulation 36 of the MahaRERA (General) Regulations, 2017. By order dated 17 April 2025, MahaRERA rejected the said Review Application. Thereafter, the Applicant filed Appeal No. AT06/00500/25 before the Maharashtra Real Estate Appellate Tribunal.

4. On 20 May 2025, the Applicant issued a Demand Notice to Respondent Nos. 1 and 2. Respondent Nos. 1 and 2 replied to the said notice by their letter dated 18 June 2025. Thereafter, on 25 July 2025, the Applicant issued a notice to Respondent Nos. 1 and 2 under Section 21 of the Arbitration and Conciliation Act, 1996. By the said notice, the Applicant invoked the arbitration agreement contained in the said Contract. Respondent No. 1, through its Advocates, gave a reply dated 22 August 2025 to the notice issued on behalf of the Applicant. Disputes have arisen between the parties and the parties have not been able to agree upon the constitution of the arbitral tribunal. The Applicant has approached this Court by filing the present Application under Section 11 of the Arbitration and Conciliation Act, 1996. The Applicant seeks appointment of a Sole Arbitrator to decide the disputes between

the Applicant and Respondent Nos. 1 and 2 arising out of the said Contract.

5. Mr. Zaid Ansari, learned Advocate appearing for the Applicant, submitted that at the stage of considering an application under Section 11 of the Arbitration and Conciliation Act, 1996, the Court has to make only a limited enquiry. The Court has to see whether, prima facie, an arbitration agreement exists between the parties. According to him, questions regarding accord and satisfaction, limitation of the claims on merits and whether the disputes can be referred to arbitration are matters which have to be considered by the Arbitral Tribunal under Section 16 of the said Act. In support of this submission, reliance was placed upon the judgment of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532.

6. Learned Advocate submitted that, as held by the Supreme Court in paragraph 133 of the said judgment, even when an objection regarding limitation is raised before the Court hearing the application for appointment of an arbitrator, the Court is required to examine only whether the application under Section 11(6) has been filed within the prescribed period. According to him, at this stage the Court is not required to decide whether the claims which are sought to be referred to arbitration are themselves within limitation. This is so where deciding such an issue would require detailed examination of evidence and facts.

7. Learned Advocate then dealt with the judgments relied upon by Respondent Nos. 1 and 2 regarding the relationship between

the RERA Act and arbitration. He submitted that the judgment of this Court in *Rashmi Realty Builders Pvt. Ltd. v. Rahul Pagariya*, reported in 2024 SCC OnLine Bom 3871, is distinguishable on facts and on the issue considered therein. According to the Applicant, the question before the Court in *Rashmi Realty* was whether the remedies available under the RERA Act excluded or took away the remedy of arbitration. The question involved in the present case, according to the Applicant, is different. It is whether the availability or use of a remedy under the RERA Act prevents arbitration of an independent dispute arising out of the Agreement for Sale. It was submitted that this question did not arise for consideration in *Rashmi Realty*.

8. In support of this submission, learned Advocate relied upon the decision of this Court in *Abhay Kanhere v. Morya Infraconstruct*, Arbitration Petition No. 148 of 2024. It was submitted that the observations made in *Rashmi Realty* have to be understood with reference to the particular question which was before the Court in that case. Learned Advocate relied upon the judgment of the Supreme Court in *Ravi Ranjan Developers v. Aditya Kumar Chatterjee*, 2022 SCC OnLine SC 568. According to the said principle, a judgment is a precedent for the issue which arose for consideration and was decided by the Court. Every observation made in a judgment cannot be treated as a precedent for all other matters.

9. Learned Advocate referred to the subsequent judgment in *Laxman Vaid v. Shree Siddhivinayak*, 2026:BHC-OS:20687. He submitted that the said judgment followed *Rashmi Realty* because

there was no subsequent contrary decision and, therefore, *Rashmi Realty* was treated as binding. At the same time, the Court noted that the Special Leave Petition filed against *Rashmi Realty* had been dismissed without laying down any ratio. It was submitted that the decision in *Abhay Kanhere* was not brought to the notice of the Court in *Laxman Vaid*. Therefore, according to the Applicant, *Laxman Vaid* can be distinguished on this ground as well as on the facts on which that decision was rendered.

10. Learned Advocate dealt with the objection based upon Section 8 of the Arbitration and Conciliation Act, 1996. He submitted that Section 8 applies where a party, before submitting its first statement on the substance of the dispute, asks the Court to refer to arbitration a matter which is the subject matter of a pending judicial proceeding. According to the Applicant, Section 8 does not create a general prohibition against pursuing an independent cause of action merely because, in an earlier proceeding filed by the other party, no application under Section 8 was made.

11. It was submitted that the complaint filed by Respondent Nos. 1 and 2 before MahaRERA was regarding delayed possession and payment of interest under Section 18 of the RERA Act. On the other hand, the claim sought to be raised by the Applicant in the present proceedings is for recovery of outstanding sale consideration, including the amount payable for the additional area. According to the Applicant, these claims were not the subject matter of the complaint filed before MahaRERA. Therefore, merely because Respondent Nos. 1 and 2 had independently used their

statutory remedy before MahaRERA, it cannot be said that the Applicant's claims were submitted for adjudication before MahaRERA. Learned Advocate submitted that the decision of Respondent Nos. 1 and 2 to pursue their own claims before MahaRERA could not decide or restrict the forum which the Applicant could choose for pursuing its own independent claims arising under the Agreement for Sale. It was submitted that the original order passed by MahaRERA on 14 August 2024 was passed ex parte. Therefore, according to the Applicant, there was no occasion for the Applicant to file a statement of defence in those proceedings. The Review Application filed by the Applicant was contested, but it was rejected on the ground relating to service and not after deciding the merits of the Applicant's claims. Thereafter, the Applicant filed an appeal before the Maharashtra Real Estate Appellate Tribunal. According to the Applicant, participation in the appellate proceedings was required because of the circumstances and could not be treated as a voluntary choice by the Applicant to have its independent claims decided before the RERA forum.

12. Learned Advocate referred to prayers (e) and (f) in the Memo of Appeal. He submitted that these prayers were made for challenging the Non-Compliance Order, Recovery Warrant and Attachment Notice. According to the Applicant, these were coercive steps which followed from the ex parte order dated 14 August 2024. The said prayers, therefore, have to be read as part of the complete relief sought in the appeal. They cannot be treated as an independent request to MahaREAT to decide the Applicant's

claim as an original proceeding. It was submitted that MahaREAT, while hearing the appeal arising from the complaint filed by Respondent Nos. 1 and 2 under Section 18 of the RERA Act, could not grant a money decree in favour of the Applicant in respect of an independent claim. According to the Applicant, such a claim could only be made by filing a separate original proceeding before the appropriate forum. Learned Advocate submitted that even before filing the appeal and before issuing the notice under Section 21 of the Arbitration and Conciliation Act, 1996, the Applicant had issued a separate Demand Notice to Respondent Nos. 1 and 2. According to the Applicant, this showed that it had consistently intended to pursue its claim for recovery independently.

13. Reliance was placed upon Miscellaneous Application No. 630 of 2026, which was filed seeking waiver of the deposit required under Section 43(5) of the RERA Act. Learned Advocate submitted that, in that application, the Applicant had disclosed that the present Section 11 proceedings were pending and would be pursued. The Applicant had placed documentary material at Exhibit “D”, which included a screenshot of the Bombay High Court website. Learned Advocate relied upon paragraph 9 of the said application in support of this submission. As regards the observations made by MahaREAT in its order dated 4 September 2026 passed in the said Miscellaneous Application, learned Advocate submitted that the said order was limited only to the question of deposit under Section 43(5) of the RERA Act. He pointed out that MahaREAT observed in paragraph 14 that the Applicant's claim was still disputed and required adjudication on

merits. He relied upon paragraph 17, where MahaREAT clarified that nothing contained in that order should be treated as a final finding and that all issues were kept open. Learned Advocate dealt with the objection relating to the claim for compensation. He submitted that Sections 19(6) and 19(7), read with Section 31 of the RERA Act, permit a promoter to initiate proceedings for recovery of interest from an allottee. However, according to him, the RERA Act does not contain a similar provision allowing a promoter to claim compensation from an allottee. In support of this submission, reliance was placed upon the judgment of the Kerala High Court in *Gopakumar B. Nair v. K.V. Sugunan*, dated 30 January 2025.

14. Learned Advocate submitted that, in any event, the question as to what is the real nature of the compensation claim and whether it can be referred to arbitration should be left to the Arbitral Tribunal. Reliance was placed upon *Abhay Kanhere*. According to the Applicant, at the stage of considering an application under Section 11, the Court should not decide the nature of the claim and reject the Applicant's request for arbitration on that basis. It was submitted that the claim for compensation was a genuine claim and was not subsequently created only for the purpose of the present proceedings. According to the Applicant, the claim arose from events which had taken place before the filing of the present Arbitration Application. It was submitted that Respondent No. 1, personally and through Mr. Balwinder Singh Gujral, had made complaints to the MCGM. According to the Applicant, these complaints obstructed the

process of obtaining the Occupation Certificate and resulted in revocation of the fire approval. The Applicant relied upon the criminal proceedings initiated in connection with these acts, which ended in acquittal.

15. Learned Advocate submitted that the acts of Respondent No. 1, who was the owner or occupant of the said Flat, had been pleaded in paragraphs 4.9 and 4.14 to 4.16 of the Arbitration Application. According to the Applicant, these acts gave rise to disputes arising under or in connection with the Agreement for Sale. It was submitted that such disputes fall within the scope of Article 17.21 of the said Agreement.

16. Learned Advocate dealt with the objection regarding limitation. He submitted that although the objection was orally raised at the hearing, Respondent Nos. 1 and 2 had relied upon limitation in their Affidavit-in-Reply.

17. In respect of the claim for the additional area amounting to Rs.92,45,590/-, learned Advocate submitted that the claim was within limitation from the record. According to the Applicant, the cause of action for this claim arose on 7 October 2022, when the amended sanctioned plans were completed. The notice invoking arbitration was issued on 25 July 2025. Therefore, according to the Applicant, the notice was issued within three years from the date on which the cause of action arose. As regards the claim for the balance consideration of Rs.41,59,726/-, learned Advocate submitted that the claim was, in any event, saved by Section 19 of the Limitation Act, 1963. He relied upon the Applicant's contention

that Respondent No. 1's own Review Application before MahaRERA records, in paragraph 4 of the order dated 30 April 2026, the part-payments made on 9 August 2023 and 10 August 2023 towards the said flat. According to the Applicant, these payments amount to acknowledgment within the meaning of Section 19 of the Limitation Act. Therefore, a fresh period of limitation would commence from the date of such payment. On this basis, the Applicant submitted that the claim remained within limitation up to 10 August 2026.

18. Learned Advocate submitted that, in view of the law laid down by the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*, (2024) 12 SCC 1 the enquiry at the stage of Section 11 is limited to determining whether the application under Section 11(6) has been filed within the prescribed period. According to the Applicant, the present Application has been filed within time. Whether the individual claims sought to be referred to arbitration are themselves barred by limitation is a separate question. Such questions, according to the Applicant, involve the merits of the claims and ought to be considered by the Arbitral Tribunal in exercise of its jurisdiction under Section 16 of the Arbitration and Conciliation Act, 1996.

19. Mr. Rohan Savant, learned Advocate appearing for Respondent Nos. 1 and 2, submitted that the judgment of this Court in *Laxman Mura Vaid and Anr. v. Shree Siddhivinayak Infrastructure and Realty*, Commercial Arbitration Application No. 637 of 2026, cannot be said to have been decided per incuriam. Learned Advocate submitted that the judgment in *Abhay Damodar*

Kanhere, did not consider the judgment of the Supreme Court in *Arif Azim Co. Ltd. v. Aptech Ltd.*, (2024) 5 SCC 313. According to the Respondents, the decision in *Abhay Kanhere* proceeded on the basis that, while considering an application under Section 11 of the Arbitration and Conciliation Act, 1996, the Court only has to see whether an arbitration agreement exists and need not examine anything. It was submitted that this is not the correct position, in view of the judgment in *Rashmi Realty*. According to the Respondents, the said judgment holds that disputes between an individual allottee and a promoter are not capable of being referred to arbitration. Learned Advocate submitted that the observations made in paragraph 12 of *Abhay Kanhere* regarding the jurisdiction of the civil court being excluded under Section 79 of the RERA Act were made considering the particular facts of that case. According to the Respondents, those observations cannot be treated as laying down a general rule which is contrary to the ratio laid down in *Rashmi Realty*.

20. It was submitted that the finding in paragraph 63(i) of *Rashmi Realty*, namely that disputes between an individual allottee and a promoter are non-arbitrable, is the ratio of that judgment. According to the Respondents, it is not merely an observation made in passing. They submitted that this finding was necessary for reaching the conclusion in paragraph 63(ii), namely that the jurisdiction of the RERA Authority constituted under Section 20 of the RERA Act is not taken away merely because the Agreement between the promoter and the allottee contains an arbitration clause. Learned Advocate submitted that the Special

Leave Petition challenging the judgment in *Rashmi Realty* was dismissed by the Supreme Court by order dated 1 September 2025. Therefore, according to the Respondents, the principle stated in paragraph 63(i) of *Rashmi Realty* continues to apply. It was submitted that this binding principle was not considered in *Abhay Kanhere*. On the other hand, it was considered in *Laxman Mura Vaid*. Therefore, according to the Respondents, the judgment in *Laxman Mura Vaid* cannot be said to have been rendered per incuriam.

21. Learned Advocate next submitted that the disputes for which the Applicant is seeking appointment of an Arbitrator are themselves matters covered by the statutory scheme of the RERA Act. It was submitted that the Applicant's claims include recovery of arrears of balance sale consideration and interest on delayed payments. According to the Respondents, these claims are covered by Sections 19(6) and 19(7) of the RERA Act. These provisions deal with the obligation of an allottee to make payments as agreed under the Agreement for Sale and to pay interest when there is delay in making such payments. It was submitted that Sections 36, 37, 38 and 40 of the RERA Act give powers to the RERA Authority to issue proper directions and to enforce its orders where there is a breach of the obligations of an allottee. Therefore, according to the Respondents, the claims mentioned by the Applicant in its notice invoking arbitration, could have been raised before the competent RERA forum.

22. Learned Advocate submitted that the claims which the Applicant is now seeking to refer to arbitration had, in fact, been

raised by the Applicant in First Appeal No. 500 of 2025 before the Maharashtra Real Estate Appellate Tribunal. Specific reliance was placed upon prayer clauses (e) and (f) of the said appeal. According to the Respondents, those prayers relate to the same claims which the Applicant is now seeking to refer to arbitration. Reliance was placed upon the order dated 4 September 2026 passed by the Maharashtra Real Estate Appellate Tribunal in the quantification application filed in the said appeal. Learned Advocate submitted that the Tribunal had recorded in paragraph 14 of that order that the Applicant's claims would be considered and decided at the time of final hearing of the First Appeal.

23. As regards the claim for damages or compensation, learned Advocate submitted that the said claim was an afterthought. According to the Respondents, the claim had neither arisen nor been raised by the Applicant before filing the present Application under Section 11. It was contended that the claim was raised orally for the first time during the hearing of the present Application. According to the Respondents, this was done to bring the dispute within the arbitration clause and to subject the Respondent-allottees to arbitration proceedings.

24. Learned Advocate sought to distinguish the judgment of the Kerala High Court in *Gopakumar B. Nair*, relied upon by the Applicant. It was submitted that the said judgment dealt with the question of jurisdiction of the RERA Authority as against the jurisdiction of the civil court. It did not deal with the effect of an arbitration clause contained in an Agreement for Sale governed by the RERA Act. According to the Respondents, the said judgment

does not apply to the present dispute.

25. Objection under Section 8 of the Arbitration Act. Learned Advocate then dealt with the objection based upon Section 8 of the Arbitration and Conciliation Act, 1996. It was submitted that Respondent Nos. 1 and 2 had filed proceedings before MahaRERA seeking, among other reliefs, interest for delayed possession and a direction to the Applicant to hand over lawful possession of the premises along with the Occupation Certificate and two car-parking spaces. Other reliefs were sought in those proceedings. It was submitted that although the Applicant was served with the MahaRERA proceedings, the Applicant chose not to remain present before MahaRERA. As a result, MahaRERA proceeded with the matter and passed its final order dated 14 August 2024 allowing the complaint. Learned Advocate submitted that the Applicant did not invoke Section 8 of the Arbitration and Conciliation Act, 1996 before MahaRERA at the stage permitted by law. According to the Respondents, after the complaint had proceeded and ended in a final order, the Applicant could no longer seek reference of the disputes which were the subject matter of that proceeding to arbitration. In support of the submission regarding the stage at which Section 8(1) has to be invoked, reliance was placed upon *SSIPL Lifestyle Pvt. Ltd. v. Vama Apparels (India) Pvt. Ltd.*, 2020 SCC OnLine Del 1667. It was submitted that, after the amendment to Section 8(1) by the Arbitration and Conciliation (Amendment) Act, 2015, the provision refers to the stage of submitting the first statement on the substance of the dispute. According to the Respondents, the purpose is that a party which wants arbitration

must act with due diligence and cannot wait for the proceedings to progress before seeking arbitration. Learned Advocate submitted that once the Applicant failed to invoke Section 8 at the proper stage and the proceedings before MahaRERA ended in a final order, the Applicant could not approach this Court under Section 11(6) in respect of the same subject matter. Reliance was placed upon *Anil v. Rajendra*, (2015) 2 SCC 583, paragraphs 9 to 12 and 16, in support of the submission based on the principle of issue estoppel. It was submitted that, after filing the appeal before MahaREAT, the Applicant submitted to the jurisdiction of the statutory RERA framework. According to the Respondents, the claims which the Applicant now seeks to refer to arbitration had, in any event, been raised by the Applicant in the said First Appeal.

26. Alleged splitting of cause of action. Learned Advocate lastly submitted that the Applicant cannot divide its cause of action by asking the RERA forum to decide some of the disputes and seeking arbitration for the remaining disputes. Reliance was placed upon the judgment of the Supreme Court in *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya*, (2003) 5 SCC 531.

27. It was submitted that the claims raised by Respondent Nos. 1 and 2 before MahaRERA and the claims which the Applicant now seeks to refer to arbitration arise from the same Agreement for Sale. According to the Respondents, even the Applicant accepts that these disputes fall within the scope of the arbitration clause. However, when the MahaRERA proceedings were pending, the Applicant did not ask for the claims raised by Respondent Nos. 1 and 2 to be referred to arbitration. According to the Respondents,

the Applicant failed to invoke the arbitration clause at the proper stage and participated in the appellate proceedings before MahaREAT. It cannot now invoke the same arbitration clause only in respect of some of the disputes. According to the Respondents, such a course would amount to splitting the cause of action, which is not permissible in law. Learned Advocate submitted that the Applicant had raised its claims before the RERA forum and could not seek another forum for deciding the same subject matter. It was contended that, after having given up or not used the arbitration clause in the earlier proceedings, the Applicant could no longer invoke that clause for its alleged claims. This would include the claim for damages, which according to the Respondents was sought to be raised for the first time during the hearing of the present Application.

28. Without prejudice to the above submissions, learned Advocate submitted that even if it is assumed that any claim of the Applicant could not be decided by the RERA Authority, the Applicant could, at the highest, pursue such claim by filing an independent civil proceeding. However, according to the Respondents, the Applicant could not again revive or invoke the arbitration clause after having chosen to proceed before the RERA forum and after failing to invoke Section 8 at the proper stage.

REASONS AND FINDINGS:

29. The dispute before me is not only about the money claims made by the Applicant against Respondent Nos.1 and 2. The main question is whether these claims can at all be sent to arbitration

considering the provisions of the Real Estate (Regulation and Development) Act, 2016.

30. There is an arbitration agreement between the parties. Respondent Nos.1 and 2 have not disputed that the arbitration clause exists. The Applicant has acted on the said clause and has issued notice under Section 21 of the Arbitration and Conciliation Act, 1996. Therefore, the first requirement for exercising jurisdiction under Section 11 is satisfied.

31. The Applicant submits that once it is found that there is an arbitration agreement, the Court should not go into the matter. For this purpose, reliance is mainly placed on *Krish Spinning* and on *Abhay Damodar Kanhere*. The submission is that proceedings under Section 11 are not like a full trial and disputed questions, including arbitrability, should be left to the Arbitral Tribunal under Section 16. To this extent, the Applicant is right that Section 11 proceedings cannot become a trial about every dispute. The Applicant is right that questions relating to limitation of the individual claim, accord and satisfaction and other matters requiring detailed evidence should not be decided at this stage. But the submission that only because an arbitration clause exists, the enquiry of the Court must come to an end cannot be accepted in such an absolute manner. In *Arif Azim Co. Ltd*, the Supreme Court has made a distinction between jurisdictional issues and admissibility issues. The question that the Arbitral Tribunal has no power to decide a particular dispute is different from the question that a particular claim is time -barred or otherwise not admissible. The Supreme Court has held that non-arbitrability can be looked

into at the stage of reference, but such examination has to be limited and only prima facie.

32. The Supreme Court in *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1, and in *NTPC Ltd. v. SPML Infra Ltd.* (2023) 9 SCC 385, has held that at the stage of reference, the main enquiry is regarding existence and validity of the arbitration agreement. There can be an enquiry regarding non-arbitrability, the Arbitral Tribunal is the first authority to decide the question of non-arbitrability. But where the dispute is and on the face of it non-arbitrable, the Court at the stage of reference can interfere. This is the limited area in which this Court has to examine the present dispute. It is not the stage for conducting a detailed trial. The Court has only to see whether, from the admitted or undisputed relationship between the parties and the statutory provisions, the dispute can be referred to arbitration.

33. The Respondents are not asking this Court to decide whether the Applicant is entitled to Rs.92,45,590/- towards additional area, Rs.41,59,726/- towards balance consideration or any compensation. Their objection is at an earlier stage, namely whether this type of dispute can at all be decided by a private Arbitral Tribunal. For deciding this question, the Court need not examine all accounts, payments, adjustments, or evidence regarding actual loss. It is necessary to see the nature of the relationship between the parties and the nature of the dispute. Therefore, the objection cannot be rejected only by saying that Section 16 gives power to the Arbitral Tribunal.

34. The judgment in *Abhay Damodar Kanhere* is relevant regarding the limited nature of enquiry under Section 11. In that judgment, it was observed that the jurisdiction under Section 11 is “a very limited” one and that questions of jurisdiction can be considered by the Arbitral Tribunal under Section 16. More importantly, the learned Judge noticed that the exact question before the Court in the earlier Second Appeal was whether the jurisdiction of RERA is taken away because of an arbitration clause, and not whether the existence of RERA takes away arbitration. In *Abhay Kanhere*, the question which was framed was:

“Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is ousted, if the agreement between the promoter and the allottee contains arbitration clause?”

35. The learned Judge held that an arbitration clause cannot take away the statutory jurisdiction of RERA. It was observed that whether the statutory powers of RERA would make arbitration proceedings impossible was not the question which was framed before the Court. Therefore, the observations regarding that converse issue were not treated as the ratio of that judgment.

36. The Applicant has rightly relied upon paragraph 41 of *Ravi Ranjan Developers*. The following words explain that while considering a judgment, the Court has to see what exact issue was decided:

“41. It is well settled that a judgment is a precedent for the

issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say. [Emphasis Supplied]”

37. This principle is required to be kept in mind while considering *Rashmi Realty*. In *Rashmi Realty*, the Court, after considering the provisions and scheme of RERA, recorded in paragraph 63 the following conclusion:

“63. In view of the above discussion following conclusions are recorded:— (i) The dispute between the individual allottee and the promoter or the dispute between the Association of the Allottees and the Promoter covered under Real Estate Regulation and Development Act, 2016 is non-arbitral in nature. (ii) The jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted, even if the agreement between the promoter and the allottee contains arbitration clause.”

38. Therefore, paragraph 63 has two parts. The second part answers the question which was framed before the Court, namely that the jurisdiction of RERA is not taken away only because the Agreement contains an arbitration clause. But the first part says that the dispute between an individual allottee and promoter which is covered by RERA is non-arbitral. That part cannot be ignored as if it is not there. At the same time, the reasoning in *Abhay Kanhere* cannot be ignored. That judgment has considered the question which was framed and the principle of precedent and

has understood the effect of *Rashmi Realty* in a different manner.

39. The issue becomes more important because of the later judgment in *Laxman Mura Vaid*. In that matter, this Court considered *Rashmi Realty* as well as the contrary view taken by the Delhi High Court. It was held that *Rashmi Realty* had not been set aside and continues to operate as a judgment of this Court. The argument that dismissal of the Special Leave Petition does not mean that the Supreme Court has declared any ratio was considered. Though that argument was accepted, the Court held that *Rashmi Realty* still remains a judgment of this Court and cannot be ignored.

40. In *Laxman Mura Vaid*, a claim for balance consideration under an Agreement for Sale was not treated merely as a simple money dispute between two persons having no other relationship. The Court looked at from where the claim came, between whom the claim was made and from which real estate transaction the claim arose. It held that merely describing the claim as contractual does not take it outside the promoter-allottee relationship. The Court held that Section 16 cannot give jurisdiction where the substantive law has taken away such jurisdiction.

41. I have carefully considered the submission of the Applicant that *Laxman Mura Vaid* should be distinguished because *Abhay Kanhere* was not brought to the notice of that Court. This submission has some force while considering whether both judgments can be read together. A judgment which was not considered by a later coordinate Bench does not for that reason

disappear., merely because a judgment is delivered later, it does not become a judgment of a larger Bench. The law of precedent does not depend only upon which judgment is later in date. The strength of the Bench and the exact issue which was decided are important. At the same time, *Laxman Mura Vaid* cannot be ignored. It is a recent decision of this Court which considered the same broad issue and followed *Rashmi Realty*. Even in the final part of that judgment it was held that a dispute between an individual allottee and promoter covered by RERA was non-arbitrable, even though the Agreement contained an arbitration clause. The Respondents have some substance in saying that this Court cannot proceed as if there is no judgment of this Court dealing with arbitrability. The intention of the parties to arbitrate is subject to the law which governs the particular subject. Just because the parties have agreed for arbitration does not mean that the legislature has permitted that dispute to be taken away from the statutory forum.

42. The Applicant is correct on one important aspect. The dispute raised in the present application is not the same as the reliefs which Respondent Nos.1 and 2 originally sought before MahaRERA. The present claims include balance sale consideration and an amount said to be payable towards additional area. Therefore, it is necessary to see the subject matter of the dispute and not only the fact that both proceedings arise from the same Agreement for Sale. The Applicant has relied upon the fact that Respondent Nos.1 and 2 themselves started the RERA proceedings. This submission cannot be rejected without considering it. The

Applicant has relied upon the separate Demand Notice and the fact that its proceedings before MahaREAT arose from an ex parte order. These matters are shown from the record. On the other side, the Respondents say that the present claims are connected with the same Agreement for Sale and that the Applicant participated in the appeal before MahaREAT. They rely upon prayer clauses (e) and (f) of First Appeal No.500 of 2025 and the order dated 4 September 2026, in which, according to them, the Appellate Tribunal has observed that the Applicant's claims would be considered at the final hearing. This material does show that there is some connection between the RERA proceedings and the present claims. However, from the material available, it cannot be said that the Applicant's claims have been decided on by MahaREAT.

43. I now come to the claims. The Applicant says that Rs.92,45,590/- towards additional area became payable when the amended sanctioned plans were completed on 7 October 2022. It is claiming Rs.41,59,726/- towards balance consideration. The Applicant relies upon part-payments made on 9 August 2023 and 10 August 2023 and says that these payments have effect under Section 19 of the Limitation Act. These claims cannot be called sham claims only because the Respondents dispute them. On the face of the record, there are actual claims which require consideration. But the manner in which the Applicant describes the claim cannot decide whether it is arbitrable. The balance sale consideration is, according to the Applicant, payable under the Agreement for Sale concerning Flat No.1901. The claim for additional area comes from the same real estate transaction. The

persons against whom the claims are made are the allottees and the person making the claim is the promoter. Therefore, the dispute has a clear connection with the promoter-allottee relationship. This is the connection which *Rashmi Realty* and *Laxman Mura Vaid* have considered important. In *Laxman Mura Vaid*, an attempt to separate a sale consideration claim from the allotment transaction merely by calling it a money claim was not accepted.

44. The Respondents rely upon Sections 19(6) and 19(7) of RERA. Their submission is that the duty of the allottee regarding payment under the Agreement for Sale and interest for delayed payment falls within the statutory field of RERA. There is substance in this submission for understanding the nature of the relationship. However, I am not deciding at this stage the exact amount payable, whether the Applicant's calculation is correct, whether any payments or adjustments were made or what defence the Respondents may have. Those are matters concerning the merits. At present, it is enough to say that the dispute cannot be treated as having no connection with RERA.

45. The Applicant relies upon *Gopakumar B. Nair*, decided by the Kerala High Court on 30 January 2025. Reliance is placed on the discussion concerning Sections 19(6), 19(7) and 71 of RERA. The submission is that RERA does not create a substantive right in favour of a promoter to claim compensation from an allottee. The Kerala High Court considered the provisions and held, in substance, that although RERA does not create such statutory right of compensation in favour of the promoter, a right under the

general law of damages may still be available outside RERA. This submission of the Applicant helps only to a limited extent. It may show that every claim for compensation by a promoter does not become a compensation claim under RERA. But this is not the same question as whether the claim can be referred to arbitration. A claim being outside one particular remedy under RERA does not give a party a right to choose arbitration. The question of arbitrability still has to be considered from the statutory scheme and the law applicable to it. On this limited issue, the Respondents have a point.

46. I do not accept the submission of the Respondents that the compensation claim should at this stage be rejected as merely an afterthought. The Applicant has stated about complaints made before MCGM, issues concerning the Occupation Certificate, fire approval and criminal proceedings and has pleaded these facts in the Arbitration Application. According to the Applicant, these matters arise under Article 17.21 of the Agreement. Whether these allegations can be proved, whether they caused loss, whether such loss is recoverable and whether the Agreement permits recovery of such amount are matters which cannot be decided at this stage.

47. I now come to the objection under Section 8 of the Arbitration and Conciliation Act. The Respondents submit that they had approached MahaRERA, that the Applicant was served but did not appear, that the Applicant did not make an application under Section 8 and entered into the appellate proceedings before MahaREAT. According to the Respondents, after doing so, the Applicant cannot now come back and seek arbitration. The

Applicant is right to the extent that Section 8 cannot become a permanent prohibition against every independent claim made by the other party. Merely because several disputes arise from the same Agreement for Sale, it cannot be said that every possible claim is the same subject matter.

48. The Respondents rely upon *Sukanya Holdings (P) Ltd.*. The Supreme Court observed:

“13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.”

49. The Supreme Court held:

“16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.”

50. And in paragraph 17 the Court held :

“17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.”

51. *Sukanya Holdings* shows that a party cannot artificially divide one subject matter only for getting parallel adjudication before two different forums. But the judgment cannot be extended to mean that every new claim which arises under the same contract becomes barred only because some earlier proceeding was filed under another law. The present case is not one where the Applicant first asked for arbitration under Section 8, failed in that request and came under Section 11 for reopening the same decision.

52. The Respondents rely upon *Anil*. The facts of that case are different. There the party had approached the civil Court, had opposed the reference to arbitration under Section 8 and the civil Court had decided the issue. The Supreme Court observed in paragraph 9:

“9. The facts as narrated by us hereinbefore would show that the application filed by the respondents herein under Section 11 of the Act is nothing but an abuse of process. The partnership firm is the first plaintiff in the suit. The dispute between the parties is the subject of the suit. Precisely for that reason, the appellants sought the matter to be referred to the arbitrator. That was opposed by the respondents.

When the suit is at the final stage, the respondents have sought appointment of an arbitrator under Section 11(6) of the Act. Having approached the civil court and having opposed the reference to arbitration under Section 8(1) of the Act and the decision of the court in that regard having become final, the respondents cannot invoke jurisdiction under Section 11(6) of the Act; it is hit by the principle of issue estoppel.”

53. In paragraph 12, the Supreme Court stated that when the civil Court's decision to entertain the dispute despite the arbitration clause had become final, the principle of res judicata would apply. In the present matter, there is no such earlier final judicial decision deciding the question of arbitration. Therefore, I am not able to accept the submission of the Respondents that *Anil* creates bar in the present case. There was no order of MahaRERA deciding an application under Section 8 and rejecting arbitration. There is no judicial finding that the Applicant consciously gave up its right under the arbitration agreement. The original MahaRERA order is stated to have been passed ex parte. The later appeal was filed against the consequences arising from that order. This position is different from the final Section 8 decision which was present in *Anil* .

54. The reliance on *SSIPL Lifestyle Pvt. Ltd*, does show that a party who wants arbitration cannot remain silent for an indefinite period after entering judicial proceedings. The Delhi High Court in paragraph 27 held that the words “not later than the date of” provide a definite point of time for making an application under Section 8 and treated the date of filing the first statement on the substance of the dispute as the outer limit. In paragraph 31, the

Court described the amendment as a conscious step towards prescribing a limitation period and said:

“31. Viewed in the background of the amendments in the CPC including the recent amendments in CPC in the context of the Commercial Courts Act, 2015 and the amendments in the Arbitration Act, 2016, this Court concludes that the amendment is a conscious step towards prescribing a limitation period for filing the Section 8 application. The mention of the word “date” in the amended provision means that it is a precise date and usually incapable of ambiguity. The same is a crystalized date and not a “period” prior to the filing of the first statement on the substance of the dispute. The entire intention is that those parties who wish to proceed for arbitration ought to do so with alacrity and speed and not merely procrastinate.”

55. This principle would still require that there was an earlier judicial proceeding relating to the same subject matter. It cannot increase or enlarge the subject matter of the earlier proceeding. If the Applicant's present claim for additional consideration was not placed before MahaRERA for adjudication as an independent claim and no final order decided that claim, then the failure to invoke Section 8 in that earlier proceeding cannot create a wider bar than what Section 8 provides. There is one more development which cannot be ignored. On 11 August 2026 the Supreme Court decided *Neo Developers Private Limited v. Rahul Bhargava & Ors.*, 2026 INSC 875. In that case, the Supreme Court did not permit parallel proceedings where “The prayers made before both the authorities are substantially the same”, and held that the application for arbitration was misplaced on those facts. The parties were sent back to HRERA and the contentions of the developer were kept

open. *Neo Developers* gives some support to the Respondents on the question of election and overlapping proceedings. But in my view it does not decide the question which arises in the present case. The Supreme Court was considering a factual situation where the prayers before the two forums were substantially the same and the statutory proceedings had reached the stage considered by the Supreme Court. It did not hold that every dispute between every promoter and allottee under every Agreement for Sale governed by RERA is, as a class, incapable of arbitration. Therefore, it cannot be treated as giving the answer to the difference between *Rashmi Realty* and *Abhay Kanhere*.

56. I find that the Respondents have not shown bar under Section 8, issue estoppel or election so as to dispose of the whole Section 11 Application. At the same time, if any particular prayer is substantially the same as a prayer placed before the RERA forum and pursued before the Appellate Tribunal, the Applicant cannot use arbitration as another parallel route for getting another adjudication. This follows from *Sukanya Holdings, Anil* in its factual situation, the principle in *SSIPL Lifestyle* and the decision of the Supreme Court in *Neo Developers*.

57. The next objection is regarding limitation. The Applicant says that the claim of Rs.92,45,590/- arose on 7 October 2022 and the notice invoking arbitration was issued on 25 July 2025. It is submitted that the part-payments made on 9 August 2023 and 10 August 2023 saved the claim for balance consideration under Section 19 of the Limitation Act. The Respondents say that the claims are stale.

58. On this question, the position is more clear. The Applicant relies upon paragraph 133 of *Krish Spinning*, which states:

“133. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). As a natural corollary, it is clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator.”

59. Therefore, I am not deciding at this stage whether each individual claim is within limitation. The effect of the two part-payments, whether Section 19 of the Limitation Act applies, the exact date when the cause of action arose and whether there was any subsequent acknowledgment may require evidence and detailed consideration. These issues are kept open. The Section 11 Application has not been shown to be barred by limitation.

60. Taking the matter as a whole, my findings so far are that there is a valid and existing arbitration agreement. There are genuine disputes and the claims are not being rejected as sham. The question of limitation of the claims cannot be decided at this stage. The objections based upon Section 8 and issue estoppel do not create bar against every claim. The compensation claim cannot be rejected merely by saying that it is an afterthought. But all these

findings still do not answer the main question as to whether the dispute is arbitrable.

61. The difficulty is the question of arbitrability. On one side there is *Rashmi Realty*, which in paragraph 63(i) says that a dispute between an individual allottee and promoter covered by RERA is non-arbitral. On the other side is *Abhay Kanhere*, which says that the question framed in the earlier judgment was whether arbitration would take away the jurisdiction of RERA, and that the converse question was not decided. There is the judgment of the Delhi High Court in *Priyanka Tak Sood*, where the view was taken that RERA and arbitration can operate as concurrent remedies in an appropriate individual dispute. That reasoning was based upon Sections 79, 88 and 89 of RERA. Thereafter, *Laxman Mura Vaid* considered the contrary Delhi view but followed *Rashmi Realty* as the judgment of this Court governing the issue. Therefore, this is not a case where one party has one judgment and the other party has another judgment on some small point. The difference goes to the basic question. The issue is whether the existence of a statutory forum under RERA and its public nature takes the entire promoter-allottee class outside private arbitration, or whether the Court has to examine the exact relief, subject matter and nature of dispute in every case. This difference is important. If the first view is correct, every such Section 11 application would fail at the beginning. If the second view is correct, an Arbitral Tribunal may have jurisdiction over some contractual disputes even though RERA remedies are available or were earlier used. The reasoning in *Abhay Kanhere* cannot be ignored because *Laxman Mura Vaid* was

decided later. The Supreme Court has stated that a precedent has to be understood by seeing the issue which was raised and decided. A later coordinate Bench is not a Bench of larger strength. Therefore, the issue cannot be decided merely by seeing which judgment came later. At the same time, I cannot ignore *Laxman Mura Vaid*. It is a recent decision of this Court which considered the contrary view of the Delhi High Court, considered the position of *Rashmi Realty* and followed it. Therefore, for a Single Judge of this Court, that judgment gives a reason not to take a different view because another interpretation may be possible. Judicial discipline is an important part of administration of justice. But judicial discipline does not mean that a conflict between decisions of coordinate Benches has to continue without resolution. If a Judge finds that the existing judgments cannot be reconciled and the difference concerns an important issue which can arise, the proper course is not to create another separate line of law. The matter can be placed before a larger Bench. The Constitution Bench in *Central Board of Dawoodi Bohra Community v. State of Maharashtra*, (2005) 2 SCC 673, has held that when a Bench of lesser strength doubts the correctness of an earlier decision, the matter may be placed before a Bench of larger strength instead of the lesser Bench directly departing from the earlier decision.

62. I have considered whether the present Application should be dismissed by following *Laxman Mura Vaid* and holding that the dispute is non-arbitrable. There is considerable force in such a course. If the only question was whether *Rashmi Realty* continues to be a judgment of this Court, there is no difficulty in saying that

it does. But the issue before me is deeper. The Applicant has relied upon *Abhay Kanhere*, the principle stated in *Ravi Ranjan Developers*, the distinction held in *Arif Azim* and the reasoning of the Delhi High Court in *Priyanka Tak Sood*. The Respondents, on the other side, have relied upon *Rashmi Realty*, *Laxman Mura Vaid*, the statutory scheme of RERA and now *Neo Developers*. In my view, it would not be correct to answer the whole controversy merely by saying that Section 16 will take care of it. Section 16 is an important principle of arbitral autonomy, but it cannot create jurisdiction where the law does not permit it. On the other hand, it would not be correct to reject every Section 11 application merely because the dispute has some relation with RERA. The Supreme Court has required only a limited prima facie examination at the Section 11 stage. The present difficulty is to determine what amounts to a prima facie bar in promoter-allottee disputes under RERA. For this reason, an authoritative decision is required.

63. I am aware that arbitration proceedings are intended to be completed quickly and unnecessary reference to a larger Bench may cause delay. The Supreme Court has held that the referral Court should not conduct a mini trial. However, the present reference is not proposed for deciding the Applicant's damages or contractual rights. It is only for settling an important question which affects the existence of arbitral jurisdiction in a category of disputes. In these circumstances, some delay for getting an authoritative answer would be better than passing another judgment which may lead to another reference. Therefore, in the present Section 11 proceedings, I do not hold that every dispute

between a promoter and individual allottee under an Agreement for Sale governed by RERA is non-arbitrable. At the same time, I do not hold that every such contractual dispute is arbitrable only because the Agreement contains an arbitration clause.

64. The question which, in my opinion, requires consideration by a larger Bench may be framed as follows:

“Whether, having regard to Sections 79, 88 and 89 and the other relevant provisions of the Real Estate (Regulation and Development) Act, 2016, a dispute arising between an individual promoter and allottee under an Agreement for Sale containing an arbitration clause is, merely because the relationship and transaction are governed by RERA, non-arbitrable as a class, or whether the arbitrability must be examined by reference to the subject matter, nature of relief and the matters which the statutory authorities under RERA are empowered to determine;

and, consequently, whether the conclusion in paragraph 63(i) of *Rashmi Realty Builders Pvt. Ltd. v. Rahul Rajendrakumar Pagariya*, 2024 SCC OnLine Bom 3871, is to be understood as a general rule of non-arbitrability of all such disputes, notwithstanding the reasoning in *Abhay Damodar Kanhere v. Morya Infraconstruct Pvt. Ltd*, Arbitration Petition No.148 of 2024, and the principles governing limited scrutiny under Section 11 as held by the Supreme Court in *Arif Azim Co. Ltd. v. Aptech Ltd*, (2024) 5 SCC 313, *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1 and *NTPC Ltd. v. SPML Infra Ltd*, (2023) 9 SCC 385 ?”

65. I find that the objection of Respondent Nos.1 and 2 regarding non-arbitrability raises a substantial question of law which requires an authoritative consideration by a larger Bench of

this Court.

66. The papers of the present Arbitration Application shall be placed before the Hon'ble the Chief Justice on the administrative side for constitution of an appropriate larger Bench to consider the questions formulated in paragraphs 64 above, or such other or modified questions as may be considered appropriate by the Hon'ble Chief Justice or the larger Bench.

67. The proceedings under Section 11 shall remain deferred for consideration in accordance with the decision of the Larger Bench.

(AMIT BORKAR, J.)